

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/26/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000098

FILED: \_\_\_\_\_

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

CHARLES W BURT

JEREMY PHILLIPS

MESA CITY COURT  
REMAND DESK CR-CCC

RULING  
AFFIRM/REMAND

MESA CITY COURT

CHARGE:   1.   DUI  
              2.   DUI W/BAC .10 OR MORE IN 2 HRS  
              3.   IMPROPER LEFT TURN  
              4.   SPEED-R&P  
              5.   FAIL TO MAINTAIN LANE  
                  #711567  
  
              1.   EXTREME DUI  
                  #711568

DOB:   06-26-01

DOC:   03-31-2000

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since hearing oral argument on September 12, 2001, and this decision is made within 30 days of that date as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. The Court has considered the record of the proceedings from the Mesa City Court, the memoranda and arguments of counsel.

Appellant, Charles W. Burt, was charged in the city of Mesa with Driving While Under the Influence of Intoxication Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); Driving With a Blood Alcohol Content of .10 or Greater, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); Extreme Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1382(A); Improper Left Turn, a civil traffic violation, in violation of A.R.S. Section 28-751.2; Speeding, a civil traffic violation, in violation of A.R.S. Section 28-701(A); Failure to Maintain Within a Lane, a civil traffic violation, in violation of A.R.S. 28-729.1. Appellant filed a Motion to Suppress and Motion to Dismiss. The motions were heard in an evidentiary hearing on September 21, 2000, before the Honorable Russell Zarkou, Mesa City Court Judge. The trial court took the issues in the Appellant's motion under advisement and denied the motion on December 5, 2000. The parties then waived their rights to a jury trial and submitted the case to the court with stipulated evidence. Appellant was found guilty on all counts on January 30, 2001. Appellant was ordered to pay fines of \$477.90, serve 30 days in jail and 20 days were suspended pending completion by Appellant of an alcohol/drug screening education and treatment program. Appellant filed a timely Notice of Appeal in this case.

The first issue raised by Appellant is his claim that he was denied his right to counsel when being advised of the

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implied consent law, Appellant requested the opportunity to speak with an attorney. Both parties are in agreement concerning the time line which occurred after Appellant requested the opportunity to speak with an attorney. This occurred at approximately 12:51 a.m. on the morning of March 31, 2000. Appellant requested to speak with an attorney at the scene of the traffic stop.<sup>1</sup> Mesa Police Officer Cantrell transported Appellant to the Mesa Police Department main station and placed Appellant into a private phone room. The officer testified:

Once we were at the station, he was placed into a phone room. It's a private room with a phone. There were some phone books in the room so I went in the room, opened them up to attorney pages for him, and then I picked up the phone and checked it by dialing my pager to make sure it was working properly, paged myself.<sup>2</sup>

Officer Cantrell left Appellant in the phone room for 11 minutes and then opened the door and observed that he was still on the phone. As she started to close the door, Appellant stopped her and asked for the telephone number to the jail so that an attorney could call him back.<sup>3</sup> After Appellant came out of the phone room, he and Officer Cantrell waited for an attorney to call Appellant back. The time from the moment Appellant went into the phone room until Officer Cantrell read the implied consent form to Appellant was 27 minutes.<sup>4</sup> The officer was concerned because the whole time they waited for a callback from an attorney, any alcohol within Appellant's system was being depleted or lost.<sup>5</sup> Officer Cantrell called the jailers to ask if there had been any telephone calls from any attorneys for

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<sup>1</sup> Reporter's Transcript of September 21, 2000, at page 5.

<sup>2</sup> Id. at page 6.

<sup>3</sup> Id.

<sup>4</sup> Id. at pages 7-8.

<sup>5</sup> Id at page 8.

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Appellant and was informed that there had been none.<sup>6</sup> When Appellant was read the implied consent law for the second time, he agreed to submit to a blood draw.<sup>7</sup>

A DUI suspect has a limited right to a "reasonable opportunity to consult with an attorney" by telephone without interfering with the State's need to timely collect evidence of intoxication.<sup>8</sup> In this case Appellant did have an opportunity to call an attorney and spent 10 minutes in the phone room making a call or calls. Apparently, Appellant was expecting a phone call back and the officer waited another 16 minutes, but there was no callback from an attorney. In fact, no attorney had called Appellant back by 2:10 a.m. which was the time he was released from police custody.<sup>9</sup> This Court finds that Appellant had a reasonable opportunity to contact an attorney and receive a callback and then consult with the attorney. This Court finds no violation of Appellant's right to counsel.

Appellant also contends that his Fifth Amendment privilege against self-incrimination was violated when the police officer spoke to him after he had requested an attorney for purposes of making an implied consent decision. Appellant was advised of his Miranda rights at the scene of the traffic stop at 12:50 a.m. by Officer Cantrell.<sup>10</sup> Appellant stated that he understood his Miranda rights and answered "yes" that he would voluntarily answer the police officer's questions.<sup>11</sup> Appellant requested an attorney after being read the implied consent form. This Court finds that Appellant's request for an attorney was a specific one: to assist him in making a decision whether to submit to a breath or blood test. There is no Fifth Amendment violation when a suspect invokes his right to counsel or right to remain silent for a specific purpose other than the officer's

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<sup>6</sup> Id.

<sup>7</sup> Id. at page 9.

<sup>8</sup> Kunzler v. Superior Court, 154 Ariz. 568, 744 P.2d 669 (1987).

<sup>9</sup> Reporter's Transcript of September 21, 2000 at page 18.

<sup>10</sup> Id at page 4.

<sup>11</sup> Id.

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intended interrogation.<sup>12</sup> Therefore, this Court finds that the trial judge correctly denied Appellant's motions to suppress and dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this case back to the Mesa City Court for all future proceedings.

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<sup>12</sup> State v. Uraine, 157 Ariz. 21, 754 P.2d 350 (App. 1988).  
Docket Code 512